IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P.No. 16200 of 2006

Date of decision:29-5-2007

Dharam Pal and another Vs. State of Haryana and others

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Shri V.K.Jain, Senior Advocate, assisted by
Shri Parshant Vashisht, Advocate for the petitioners.

Mr. Ashish Kapoor, Additional Advocate General Haryana

Mr. Vinod S. Bhardwaj, Advocate for respondent No.3.

K.S.GAREWAL,J.

This petition has been filed by Dharam Pal and Jai Parkash Dhanda, two brothers of Narnaund, District Hisar. The petitioners have challenged the acquisition of their property measuring 38 Kanals 6 Marlas. The acquisition is by the State of Haryana for the urgent construction of Disposal Works and Sewerage Treatment Plant for Narnaund town which is the stated public purpose.

The notification under Section 4 was issued on January 19, 2006. Dharam Pal filed objections stating that he was a small agriculturist and depended upon the acquired land for his livelihood. If the sewerage disposal plant was set up, there was danger of spread of disease in the locality because the acquired land was surrounded by residential houses. His land would be split up into small pieces and would be left without a connecting path.

The Land Acquisition Collector on June 21, 2006 made the following report:-

> "The land was also inspected on 19.06.2006. On inspection, it was found that there is an 'Abadi' of 25-30 houses nearabout the land in question and there is a 'pacca smadhi' measuring 6'x6' in the land in question. The landowners told that this 'Smadhi' has been built to perpetuate the memory of their forefathers (ancestors). Copies of the statements of landowners recorded under Section 5-A of the Act as well as the statements of the Department official are being forwarded to you for decision. Kindly decide the objections/statements, received under intimation to this office so that further proceedings under Section 6 of the Land Acquisition Act, could be carried out."

Thereafter declaration under Section 6 was issued on October 3, 2006 and it was specifically recorded therein that the objections filed by the landowners before the Collector had been considered and rejected on September 6, 2006.

The main argument of the petitioners is that the Collector was bound to make some recommendation after hearing the objections. In the present case the Collector had simply forwarded the objections with his report but did not make the mandatory recommendation. The petitioners rely on Section 5(2) of the Land Acquisition Act. Under this provision the Collector was bound to give the objector an opportunity of being heard, either in person or by pleader. After hearing the objections and making such inquiry as he thinks necessary, the Collector was to make a report to the Government containing his "recommendations" on the objections together

with record of the proceedings held by him. This was to enable the Government to take a decision on the objections which shall be final.

The learned counsel has referred to Shri Mandir Sita Ramji Vs. Governor of Delhi and others AIR 1974 SC 1868, wherein it was held that the Collector must enquire into the objections, give a hearing to the parties and make a recommendation. His failure to do so would show that he had declined to exercise his jurisdiction. The fact that the ultimate decision was by the State Government did not relieve the Collector from his duty to enquire into the facts and make a recommendation.

Respondents 1 and 2 filed written statement through Executive Engineer, P.W.D. Public Health Division, Hansi. It was pleaded that the land was acquired for construction of Disposal Works and Sewerage Treatment Plant. A grant had been received from the Government for the benefit of the residents of Narnaund. Rs. 32 lacs had been spent on the construction of the sewerage line upto the main sewerage line and a further sum of Rs. 90 lacs had been granted to complete the project. If the project was not completed the amount spent would be rendered useless and the public would suffer due to improper sewerage in the town. The acquired land was most suitable for the sewerage treatment plant as its location was ideal for the purpose.

The short question to be considered is whether the objections filed by the petitioners had been properly considered by the Collector and whether his report to the State Government contained his recommendation on the objections? A copy of the Collector's report has been filed with this petition as Annexure P-4 and has been reproduced above. The report clearly shows that the Collector had inspected the spot and and had found that there

was a cluster of about 25-30 houses near the acquired land. There was also a samadhi measuring 6'x 6' on the land in question, built in the memory of the forefathers of the owners, copies of the statements of the landowners recorded under Section 5-A as well as the statements of the departmental officials were forwarded to the Commissioner-cum-Secretary, Government of Haryana (P.W.D.) Public Health Division. The Collector had done so for a decision on the objections, so that further proceedings under Section 6 of the Act could be carried out.

It is quite clear that the Collector had not made any specific recommendation but we feel that the objections had been well considered by the Collector and included in his report, the Collector had also inspected the spot and mentioned what he had observed. The Collector had requested the Government to take a decision, the Government had rejected the objections.

In M/s Dharam Dev Raj Kumar Vs. State of Haryana 1983 P.L.J. 307 it was held that it was not necessary for the Collector to give firm findings accepting or rejecting each and every objection. The Collector's report itself was in the nature of a recommendation. In the above mentioned case, the landowner had filed objections urging that his land could be adjusted in the lay out plan. There were shops and godowns on the land in dispute, the land was being acquired for providing a thoroughfare to the Grain Market but this purpose could be achieved by acquiring similar vacant land nearby. The acquisition has been challenged on the ground that the Collector had failed to perform his statutory duty under Section 5-A of the Act because he had not conveyed any opinion to the State Government in his report. Therefore, he had not made any recommendation. Reliance had

been placed upon a Division Bench Judgment of Delhi High Court Hanuman Prasad Gupta and others Vs. Lt Governor Union Territory of Delhi 1972 P.L.R. 272 in which it was held as follows:-

> "It is not necessary that the Collector's recommendations on the objections should take the form of either agreeing or disagreeing with them. The recommendation may as well take the shape of a suggestion to the appropriate Government that the objections raise certain issues, in this case issue of law, which may be examined. Even if the Collector's own opinion on the legal issues is not there it will nonetheless be a recommendation, nothing more and nothing less."

The view in Hanuman Parsad Gupta's case (supra) was reiterated in Lt. Col. Governor Vs. Mandir Sita Ramji A.I.R. 1973 Delhi 218. In the latter case the report made by the Land Acquisition Collector read as under:-

> "One objection was received from Shri D.R.Rungta, General Attorney of Shree Sita Ram Bhandar who stated that the objector had following land and houses etc. in the land in question:- (1) Land measuring 324 Bighas, (2) Five Cattle sheds pacca built of vast dimensions, (3) Several servants of quarters, (4) Wells five in number (5) One fruit garden, (6) Several godowns, (7) One Shri Hanuman Mandir, (8) One Pathshala. Other objections raised by him are mostly of a general nature. Decision may kindly be taken after inspection of site."

However, Mandir Sita Ramji case (supra) was taken up in appeal before the

Supreme Court of India and was set aside in Shri Mandir Sita Ramji (supra).

In order to determine if the present case falls within the rule laid down by the Supreme Court in Mandir Sita Ramji's case (supra) or is outside that rule, the facts of that case should be briefly examined. The acquired land was owned by a society and its objection was that the land belonged to a religious trust and exempt from the purview of the notification. The society relied upon a clause in the notification under Section 4 which specifically excluded from acquisition lands under grave-yards, tombs, shrines, lands attached to religious institutions and wakf property. The Collector submitted his report on the objections to the Delhi Administration and thereafter declaration under Section 6 was issued including the land in respect of which Mandir Sita Ramji had filed objections.

The objection petition filed by the trust before the Collector was not traceable in his office. Later on the date of the hearing a copy of the objection petition was found in the records, with an endorsement "Please report if this property is of Mandir Sita Ramji a charitable institution and is exempted from acquisition." The Collector submitted his report stating that an objection petition had been received from Mandir Shri Sita Ramji. It was not mentioned if any report had been received in pursuance to his order, or whether he had conducted any personal or other enquiry in respect of the land in question. The Collector had merely recorded that the decision may kindly be taken after inspection of the spot.

From the above it is quite apparent that the Collector had not considered the objections at all. Therefore, the landowners had a just grievance that no inquiry or hearing had taken place into their objections. It

was a clear case of failure to exercise jurisdiction. The ultimate decision of the State Government did not absolve the Collector from his duty to enquire into the objections and make his recommendation.

In the present case the Collector inspected the spot, recorded the statements of the landowners, saw the samadhi on the land, recorded the statements of the Departmental officials and sent the entire material to the State Government for decision. Can it be said that the Collector had sent his report without making recommendation on the objections? We think that Collector had fulfilled his duty by inspecting spot and recording statements of the owners and the officials. The Collector did not decide anything, indeed he was not qualified to do so because the decision was to be taken by the State Government. The Collector certainly did not recommend either acquisition or release of the land but this was only a technical omission. This case is not similar to the case of Mandir Sita Ramji where the Collector had not at all considered the objections, had neither inspected the site nor conducted any hearing or inquiry. The Collector had simply recommended that the decision may be taken after the inspection of the site. In Mandir Sita Ramji's case the owners had not got an opportunity of hearing but in the present case this was not so.

Collectors are not to decide the objections. They enquire into the objections, record the statements of the parties, inspect the sites and send their reports to the State Government. They may make recommendation or they may not do so. Nevertheless it is the decision of the State Government on the objections which is final. Therefore, if the Collector had done every thing possible to gather the facts, inspect the spot, record statements but failed to make recommendation, the acquisition

proceedings cannot be quashed on the ground of violation of the procedure or denial of the rights conferred under Section 5-A of the Act.

It is important to note that Rs.32 lacs has already been spent on the construction of the sewer line upto the main line and a further sum of Rs.90 lacs has been granted to complete the project. It was necessary to construct the Sewerage Treatment Plant near the drain which has already been laid, for disposal of treated sewerage water into Moth drain. The land had been selected keeping in view the above requirement as the acquired land was most suitable for construction of the Sewerage Treatment Plant.

In view of the above we hold that this case is not covered by the Supreme Court decision in Shri Mandir Sita Ramji's case (supra) which is clearly distinguishable. We find no merit in this petition. The petition is hereby dismissed.

(K.S.GAREWAL)
JUDGE

(AJAI LAMBA)
JUDGE

May 29, 2007
RSK

Refer to reporter